

Senate Environment, Conservation & Tourism Committee, Amendment #1

AMENDMENT NO. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 922

House Bill No. 1504

is amended by deleting Section 1 in its entirety and by substituting instead the following new section:

SECTION 1. Amend Tennessee Code Annotated Section 68-211-106(h) by deleting the subsection in its entirety and substituting instead the following new subsection:

(h)(1) Definitions:

(A) The term “applicant” means any person, as defined in Section 68-211-103(6) of the Solid Waste Disposal Act, making application for the approval of a permit pursuant to the Solid Waste Disposal Act.

(B) The term “responsible party” means:

(i) Any individual who is an applicant, an officer or director of a corporation, partnership, or business association that is an applicant, or person with overall responsibility for operations of the site of a waste management unit subject to the Solid Waste Disposal Act.

(ii) Any official or management committee member of the state or political subdivision thereof that is an applicant.

(C) The term “compliance history” means a record of operation or ownership of a facility subject to the Tennessee Solid Waste Disposal Act (Tennessee Code Annotated §§ 68-211-101 et seq.) or the Tennessee

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Hazardous Waste Management Act (Tennessee Code Annotated §§ 68-212-101 et seq.).

(D) "Solid Waste Disposal Act" means Tennessee Code Annotated §§ 68-211-101 et seq.

(E) "Tennessee Hazardous Waste Management Act" means Tennessee Code Annotated §§ 68-212-101 et seq.

(2) Subject to the requirements of subsection (3) hereof, the commissioner may refuse to issue or renew a permit issued pursuant to the Solid Waste Disposal Act if he finds that the applicant or a responsible party:

(A) Has intentionally misrepresented or concealed any material fact which would have resulted in the denial of the application submitted to the department.

(B) Has obtained a permit from the department by intentional misrepresentation or concealment of a material fact which would have resulted in the permit being denied;

(C) Has been convicted of, or incarcerated for, a felony environmental criminal offense within three (3) years preceding the application for a permit for any violation of the Solid Waste Disposal Act, the Hazardous Waste Management Act or Tennessee Code Annotated § 39-14-408; or, in the case of an applicant with less than three (3) years of compliance

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history in Tennessee, has been convicted of, or incarcerated for, a felony environmental criminal offense in another jurisdiction;

(D) Has been adjudicated in contempt of any order of any court of this State enforcing the Solid Waste Disposal Act or the Hazardous Waste Management Act or has been incarcerated for such contempt within the three (3) years preceding the application for a permit or, in the case of an applicant with less than three (3) years of compliance history in Tennessee, has been adjudicated in contempt of any order of any court enforcing a federal or state solid or hazardous waste management law.

(3)

(A) An applicant that has three (3) or more years of compliance history in Tennessee shall submit, at the time of application, a statement to the effect that neither the applicant nor any responsible party has been convicted of a felony, been incarcerated or been adjudicated in contempt of court as described in subdivisions (2)(C) or (D), or alternatively list any applicable conviction, term or incarceration, or adjudication of contempt. The applicant may submit information or documentation related to such convictions, incarcerations, or adjudications, including evidence regarding one (1) or more of the facts enumerated in Section (4).

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(B) An applicant with less than three (3) years of compliance history in Tennessee shall submit, at the time of application, a compliance history disclosure form prepared by the commissioner. The form shall include the information required for applicants with three (3) or more years of compliance history in Tennessee and additionally require a listing of the names, social security numbers, taxpayer identification numbers and business addresses of the responsible parties for the regulated activities of the applicant, along with a description of any offenses identified in subdivisions (2)(C) and (D).

(4) In making the decision to issue, renew or deny any such permit the commissioner shall determine pursuant to subdivisions (2) and (3), as applicable, whether any such material misrepresentation, concealment, conviction or adjudication demonstrates a disregard for environmental regulations or a pattern of prohibited conduct. In making any finding under this subdivision, the commissioner shall consider the following factors and the applicant may submit information or documentation related to the following:

- (A) the nature and seriousness of the offense;
- (B) the circumstances in which the offense occurred;
- (C) the date of the offense;

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- (D) whether the offense was an isolated offense or part of a series of related incidents;
- (E) the applicant's environmental record and history of compliance regarding waste management in this state;
- (F) the number and types of facilities operated by the applicant;
- (G) any evidence that the applicant reported or investigated the offense itself and took action to halt or mitigate the offense;
- (H) disassociation from any persons convicted of felony environmental criminal activity;
- (I) the payment by a party convicted of felony environmental criminal activity of restitution to any victims of such criminal activity, remediation of any damages to natural resources and the payment of any fines or penalties imposed for such conduct;
- (J) other corrective actions the applicant has under taken to prevent a recurrence of the offense, including but not limited to the establishment and implementation of internal management controls; and
- (K) the need for the permit in advancing the state's welfare, health, and safety, including but not limited to the role of the facility in any solid waste region's approved plan.

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(5) This subdivision shall not apply to permits-by-rule that are issued pursuant to rules adopted by the board in accordance with subdivision (a)(2) of this section.